

UNITED STATES DISTRICT COURT

Northern District of California

San Francisco Division

COPPER HILL, INC.,

No. C13-01345 LB

Plaintiff,

**ORDER THAT CASE BE  
REASSIGNED TO A DISTRICT  
COURT JUDGE**

v.  
RENATO PAGTALUNAN, et al.,

Defendant.

**REPORT AND RECOMMENDATION**

\_\_\_\_\_  
[Re: ECF No. 1, 12]

**INTRODUCTION**

Plaintiff Copper Hill, Inc. (“Copper Hill”) filed a complaint for unlawful detainer against Defendants Renato Pagtalunan and Janette Cabauatan (collectively, “Defendants”) in San Mateo County Superior Court on January 28, 2013. Complaint, ECF No. 4 at 25-28.<sup>1</sup> Defendants removed it, but now it appears they want to remand the action. See Notice of Removal, ECF No. 1; Motion, ECF No. 12. Because Defendants have not consent to or declined the court’s jurisdiction, the court directs the Clerk of the Court to reassign this action to a district court judge and recommends that the newly-assigned district court judge remand the action back to San Mateo Superior Court.

**STATEMENT**

In its complaint, Copper Hill alleges that it is the owner of property at 24 12th Avenue in San

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<sup>1</sup> Citations are to the Electronic Case File (“ECF”) with pin cites to the electronically-generated page numbers at the top of the document.

1 Mateo, California, following a non-judicial foreclosure sale held in accordance with California Civil  
2 Code §§ 2924 et seq. *Id.* ¶ 2. It also alleges that its title was perfected by a Trustee's Deed Upon  
3 Sale recorded in the San Mateo County Recorder's Office on January 23, 2013. *Id.* ¶ 3. On January  
4 24, 2013, Copper Hill served Defendants, the current tenants of the property, with a written notice  
5 demanding that they surrender possession of the property within three days. *Id.* ¶ 7. Defendants,  
6 however, failed to do so, *id.* ¶ 8, and Copper Hill responded by filing its complaint on January 28,  
7 2013, *see generally id.* It seeks damages of \$112.90 per day, which it alleges is the fair and  
8 reasonable rental value of the property, from January 28, 2013 through the date Defendants deliver  
9 the property or judgment, whichever comes first. *Id.* ¶ 9.

10 On March 26, 2013, Defendants removed the action from state court, alleging federal-question  
11 and diversity jurisdiction. Notice of Removal, ECF No. 1. On August 5, 2013, however,  
12 Defendants filed a "Notice of Voluntary Withdraw[al] and Dismiss[al] Without Prejudice." Motion,  
13 ECF No. 12. Through this document, Defendants apparently ask the court to allow them to  
14 withdraw and/or dismiss their notice of removal. *See id.* The court thus construes Defendants'  
15 notice as a motion to remand the action back to state court. *See SCHWARZER, TASHIMA &*

16 WAGSTAFFE, CALIFORNIA PRACTICE GUIDE: FEDERAL CIVIL PROCEDURE BEFORE TRIAL § 2:3683

17 (The Rutter Group 2013) ("Even the removing *defendant* can make a motion to remand for lack of  
18 jurisdiction.") (italics in original).

## 19 ANALYSIS

### 20 I. LEGAL STANDARD

21 A defendant in a state court may remove an action to federal court so long as the action could  
22 have originally asserted federal-question jurisdiction.<sup>2</sup> 28 U.S.C. 1441(b). The burden is on the  
23 removing defendant to prove the basis for the federal court's jurisdiction. *Shizuko Nishimoto v.*  
24 *Federman-Bachrach & Assocs.*, 903 F.2d 709, 712 (9th Cir. 1990). If, after a court's prompt review  
25 of a notice of removal, "it clearly appears on the face of the notice and any exhibits annexed thereto

27 \_\_\_\_\_  
28 <sup>2</sup> District courts have original jurisdiction over cases that arise under the law of the United States. U.S. Const. art. III, § 2, cl.1.

1 that removal should not be permitted, the court *shall* make an order for summary remand.” 28  
2 U.S.C. § 1446(c)(4) (emphasis added). Removal jurisdiction statutes are strictly construed against  
3 removal. *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108 (1941); *Takeda v. Northwestern*  
4 *Nat'l. Life Ins. Co.*, 765 F.2d 815, 818 (9th Cir. 1985).

5 The “well-pleaded complaint” rule requires a federal question to be presented on the face of the  
6 plaintiff’s complaint at the time of removal for federal-question jurisdiction to exist. *Metropolitan*  
7 *Life Insurance Co. v. Taylor*, 481 U.S. 58, 63 (1987); *Duncan v. Stuetzle*, 76 F.3d 1480, 1485 (9th  
8 Cir. 1996). An actual or anticipated federal defense is not sufficient to confer jurisdiction.  
9 *Franchise Tax Bd. of California v. Construction Laborers Vacation Trust*, 463 U.S. 1, 10 (1983);  
10 *Hunter v. Phillip Morris USA*, 582 F.3d 1039, 1042-43 (9th Cir. 2009). However, a plaintiff may  
11 not defeat removal by omitting necessary federal questions from his or her complaint. *Franchise*  
12 *Tax Bd. of California*, 463 U.S. 1 at 22.

13 Federal courts also have original jurisdiction where the opposing parties are citizens of different  
14 states and the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332(a). Thus, in removal cases  
15 where the purported basis of jurisdiction is diversity jurisdiction, removal is not permitted where a  
16 defendant in the case is a citizen of the state in which the plaintiff originally brought the action (even  
17 if the opposing parties are citizens of different states). See 28 U.S.C. § 1441(b).

## 18 II. APPLICATION

### 19 A. The Court Lacks Federal-Question Jurisdiction

20 Here, Copper Hill alleges a claim against Defendants for unlawful detainer. See generally  
21 Complaint. Unlawful detainer claims do not arise under federal law and, without more, the court  
22 lacks federal-question jurisdiction. See, e.g., *Fed. Nat'l Mortg. Assoc. v. Lopez*, No. C 11-00451  
23 WHA, 2011 WL 1465678, at \*1 (N.D. Cal. Apr. 15, 2011); *GMAC Mortg. LLC v. Rosario*, No. C  
24 11-1894 PJH, 2011 WL 1754053, at \*2 (N.D. Cal. May 9, 2011); *Wescom Credit Union v. Dudley*,  
25 No. CV 10-8203 GAF (SSx), 2010 WL 4916578, at \*2 (C.D. Cal. Nov. 22, 2010) .

26 Without any detail, Defendants nonetheless asserts that the court has federal-question  
27 jurisdiction because there is “a federal question surrounding the construction of Pooling and Service  
28 Agreement of the -, which has not been construed by any court of law, state or federal.” Notice of

1 Removal, ECF No. 1 ¶ 11. (It appears that Defendants did not fill in the blank left in the above-  
2 quoted sentence.) Defendants also assert that there is “a federal question of due process rights  
3 guaranteed by the Fourteenth Amendment to the United States Constitution arising from property  
4 interests and unlawful foreclosure by [Copper Hill], [which] has unlawfully foreclosed the said real  
5 property.” *Id.* ¶ 12. Despite Defendants’ attempt to state these arguments as affirmative claims, no  
6 such affirmative claims appear in the complaint. Rather, they are federal defenses, and, as stated  
7 above, federal defenses, regardless of their merit, cannot provide this court with federal question  
8 jurisdiction. *Franchise Tax Bd. of California*, 463 U.S. at 10; *Hunter*, 582 F.3d at 1042-43.

9 **B. The Court Lacks Diversity Jurisdiction**

10 As stated above, federal courts have original jurisdiction where the opposing parties are citizens  
11 of different states and the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332(a). First, the  
12 amount in controversy does not exceed \$75,000. In unlawful detainer actions, the right to  
13 possession of the property is contested, not title to the property, and plaintiffs may collect only  
14 damages that are incident to that unlawful possession. *See Litton Loan Servicing, L.P. v. Villegas*,  
15 No. C 10-05478 PJH, 2011 WL 204322, at \*2 (N.D. Cal. Jan. 21, 2011) (quoting *Evans v. Superior*  
16 Ct.

17 , 67 Cal. App. 3d 162, 170 (1977)). Moreover, as it stands now, Copper Hill requests damages of  
18 less than \$25,000.<sup>3</sup> The amount of damages at issue in this case does not come close to reaching the  
threshold amount.

19 Second, even assuming the threshold amount for diversity jurisdiction were satisfied, removal  
20 was not proper because Copper Hill filed suit in California, and Defendants are citizens of  
21 California. *See* Notice of Removal, ECF No. 1 ¶ 5. As explained above, 28 U.S.C. § 1441(b)  
22 prohibits removal where a defendant in the case is a citizen of the state in which the plaintiff  
23 originally brought the action.

24 **CONCLUSION**

25 Based on the foregoing, the court believes that remand to San Mateo County Superior Court is

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28 <sup>3</sup> Roughly 200 days have passed since Copper Hill filed its complaint. Even at \$112.90 per day, its damages do not yet exceed \$25,000, let alone \$75,000.

1 appropriate. Because Defendants have neither consented to or declined this court's jurisdiction, the  
2 court **ORDERS** the Clerk of the Court to reassign this action to a district court judge and  
3 **RECOMMENDS** that the newly-assigned district court judge remand this action back to San Mateo  
4 County Superior Court.

5 Any party may file objections to this Report and Recommendation with the district judge within  
6 fourteen days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); N.D.  
7 Cal. Civ. L.R. 72. Failure to file an objection may waive the right to review of the issue in the  
8 district court.

9 **IT IS SO ORDERED.**

10 Dated: August 20, 2013



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11 LAUREL BEELER  
12 United States Magistrate Judge